

Introduced by Senator Figueroa

December 2, 2002

An act to amend Sections 1798.80 and 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as introduced, Figueroa. Personal information: disclosure to direct marketers.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would, subject to specified exceptions, require a business that discloses a customer's personal information, including information relating to income or purchases, to a third party for direct marketing purposes to provide the customer, within 30 days after the customer's written request, a description of the sources of that information and copies of the information disclosed. The bill would also prohibit a business from conditioning the sale of goods or services on the customer's consent to that disclosure. In addition to the legal remedies provided under current law, a customer would be entitled to recover a civil penalty, up to \$3,000, and attorneys' fees and costs for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. For free market forces to have a role in shaping
2 the privacy practices of California businesses, Californians must
3 be more than vaguely informed that a business might share
4 personal information with third parties. For free market forces to
5 work, consumers must be informed about what kind of
6 information is disclosed, how frequently, and to what kind of third
7 parties. With these specifics, consumers can knowingly choose
8 among businesses that disclose information to third parties on the
9 basis of how protective the business is of consumers' privacy.

10 SEC. 2. Section 1798.80 of the Civil Code is amended to read:
11 1798.80. The following definitions apply to this title:

12 (a) "Business" means a sole proprietorship, partnership,
13 corporation, association, or other group, however organized and
14 whether or not organized to operate at a profit, including a
15 financial institution organized, chartered, or holding a license or
16 authorization certificate under the law of this state, any other state,
17 the United States, or of any other country, or the parent or the
18 subsidiary of a financial institution. The term includes an entity
19 that destroys records.

20 (b) "Records" means any material, regardless of the physical
21 form, on which information is recorded or preserved by any
22 means, including in written or spoken words, graphically depicted,
23 printed, or electromagnetically transmitted. "Records" does not
24 include publicly available directories containing information an
25 individual has voluntarily consented to have publicly
26 disseminated or listed, such as name, address, or telephone
27 number.

28 (c) "Customer" means an individual who provides personal
29 information to a business for the purpose of purchasing, *renting*,
30 or leasing ~~a product~~ *real or personal property or any interest*
31 *therein* or obtaining a service from the business.

32 (d) "*Direct marketing purposes*" means the use of personal
33 information for marketing or advertising products, goods, or
34 services directly to individuals. "*Direct marketing purposes*" does
35 not include the use of personal information (1) by bona fide tax
36 exempt charitable or religious organizations to solicit charitable
37 contributions or (2) to raise funds from and communicate with
38 individuals regarding politics and government.

1 (e) “Disclose” means to disclose, release, transfer,
2 disseminate, or otherwise communicate orally, in writing, or by
3 electronic or any other means to any third party.

4 (f) “Established business relationship” means a relationship
5 formed by a voluntary, two-way communication between a
6 business and a customer, with or without an exchange of
7 consideration, for the purpose of purchasing, renting, or leasing
8 real or personal property, or any interest therein, or obtaining a
9 service from the business, if the relationship has not been expressly
10 terminated by the business or customer.

11 (g) “Individual” means a natural person.

12 ~~(e)~~

13 (h) “Personal information” means any information that
14 identifies, relates to, describes, or is capable of being associated
15 with, a particular individual, including, but not limited to, his or
16 her name, signature, social security number, physical
17 characteristics or description, address, telephone number, passport
18 number, driver’s license or state identification card number,
19 insurance policy number, education, employment, employment
20 history, bank account number, credit card number, debit card
21 number, or any other financial information. “Personal
22 information” also means any data or information pertaining to an
23 individual’s income, assets, liabilities, purchases, leases, or
24 rentals of goods, services, or real property, if that information is
25 disclosed, or is intended to be disclosed, with any identifying
26 information, such as the individual’s name, address, telephone
27 number, or social security number.

28 (i) “Third party” or “third parties” means any of the
29 following:

30 (1) A business that is not more than fifty percent owned or that
31 is not otherwise controlled by the business that has an established
32 business relationship with a customer.

33 (2) A business that has a chief executive officer or corporate
34 president that differs from the chief executive officer or corporate
35 president of the business that has an established business
36 relationship with a customer.

37 (3) A business that is a separate legal entity from the business
38 that has an established business relationship with a customer.

39 SEC. 3. Section 1798.83 of the Civil Code is repealed.

1 ~~1798.83.— Any waiver of the provisions of this title is contrary~~
2 ~~to public policy, and is void and unenforceable.~~

3 SEC. 4. Section 1798.83 is added to the Civil Code, to read:

4 1798.83. (a) Except as otherwise provided in subdivision (c),
5 if a business has an established business relationship with a
6 customer and intends to disclose, has within the immediately
7 preceding 12 months disclosed, or is currently disclosing the
8 customer's personal information to third parties and if the business
9 knows or reasonably should know that the third parties will use,
10 have used, or are using the personal information for direct
11 marketing purposes, that business shall, within 30 days after the
12 receipt of a written request from the customer, provide all of the
13 following to the customer free of charge:

14 (1) In writing, the name and address of the source or, if the
15 source cannot be determined from currently available data, a list
16 of the names and addresses of the likely sources of the customer's
17 personal information that has been disclosed during the
18 immediately preceding 12-month period, is being disclosed, or
19 will be disclosed to third parties for direct marketing purposes.

20 (2) True and correct copies of the customer's personal
21 information that was, is, or will be disclosed to third parties for
22 direct marketing purposes and that is in the possession, custody, or
23 control of the business at the time of the customer's request.

24 (b) No business may condition the sale of goods, services, or
25 other things of value on the customer's consent to the disclosure
26 of the customer's personal information to third parties for direct
27 marketing purposes, or on the customer's waiver of any provision
28 of, right conferred by, or obligation imposed by this title.

29 (c) The following shall not be deemed to be a disclosure of
30 personal information by a business for purposes of this title:

31 (1) Disclosures pursuant to contracts or arrangements
32 pertaining solely to any of the following:

33 (A) The storage, management, or organization of personal
34 information, where the personal information is not further
35 disclosed to third parties.

36 (B) The creation or distribution of marketing or advertising
37 materials for products or services to be offered by the business to
38 customers with whom the business has an established business
39 relationship.

1 (C) The completion of a transaction, not otherwise prohibited
2 by law, between the business and a customer with whom it has an
3 established business relationship or between the business and a
4 new customer if the customer has initiated the transaction.

5 (2) Disclosures of payment history or other information
6 pertaining to transactions or experiences between the business and
7 a customer to a consumer reporting agency where that information
8 comprises a consumer report, as defined in subdivision (d) of
9 Section 1681a of Title 15 of the United States Code, and use of that
10 information is limited by the federal Fair Credit Reporting Act.

11 SEC. 5. Section 1798.84 of the Civil Code is amended to read:

12 1798.84. (a) *Any waiver of a provision of this title is contrary*
13 *to public policy and is void and unenforceable.*

14 (b) Any customer injured by a violation of this title may
15 institute a civil action to recover damages *and, if a violation of*
16 *Section 1798.83 is alleged, to recover a civil penalty not to exceed*
17 *three thousand dollars (\$3,000) per violation.*

18 ~~(b)~~

19 (c) Any business that violates, proposes to violate, or has
20 violated this title may be enjoined.

21 ~~(c)~~

22 (d) *A prevailing plaintiff in any action commenced under*
23 *Section 1798.83 shall also be entitled to recover his or her*
24 *reasonable attorneys' fees and costs.*

25 (e) The rights and remedies available under this section are
26 cumulative to each other and to any other rights and remedies
27 available under law.